IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07-11-2006

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THE HON'BLE MR.JUSTICE P.JYOTHIMANI

W.P.No.25003 of 2006 &
M.P.No.2 of 2006

S.Gurumurthy .. Petitioner

Vs

1.The Commissioner of Police,
Greater Chennai City,
Egmore, Chennai-8.

2.Joint Commissioner of Police (North Zone)
City Police Office,
Egmore, Chennai, now
The Additional Commissioner of Police,
City Police Office
Egmore, Chennai-8. .. Respondents

Petition filed under Article 226 of Constitution of India for the issuance of Writ of certiorarified mandamus calling for the records pertaining to the Order No.Rc.No.458/54647/PR-II(1)/2004, CPO No.1322/2004 dated 15-07-2004 passed by the second respondent and quash the same and in consequence direct the second respondent to reinstate the petitioner in service.

For Petitioner : R.Sampathkumar
For Respondents : Mr.Gopiraja
Government Advocate

O R D E R

The writ petitioner challenges the order of the second respondent dated 15.07.2004 under which the second respondent has placed the petitioner under suspension on the basis that charge of misconduct is contemplated regarding leakage of question papers for the written examination for promotion test of Armed Reserve Head Constables.

2. It is also not in dispute that after the order of suspension was passed, charges were framed against the petitioner as early as on August 2005 for which the petitioner has also submitted his

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explanation. An enquiry has also been conducted. Even the enquiry officer has submitted his report and a copy of the same has also been received by the petitioner for which the petitioner has also submitted his explanation.

3. It is relevant to point out that along with the petitioner 4 other persons who were working with him were placed under suspension namely 1) R.Shanmugam Sub Inspector of Police, AR, Vellore 2)Kannan Head Constable, AR, Vellore 3)Govindaraj Head Constable, AR, Vellore and 4) Raj Head Constable, AR Thiruvannamalai, on 19.06.2004, in respect of same charges and ultimately on consideration of their representations those 4 persons were reinstated by revoking the order of suspension by the proceedings of the Deputy Inspector of General of Police, Vellore dated 19.01.2005. Further in respect of the petitioner, even though he has submitted his explanation and also made many representations, the similar order has not been passed.

4. It is also painful to note in this case, ever since the order of suspension, the petitioner has not been paid subsistence allowance. Further this Court on more than one occasion namely on 09.08.2006 and 29.09.2006 has issued specific direction to the respondents to pay subsistence allowance to the petitioner. Even as on date in spite of the order passed by this Court, it is the complaint of the petitioner that subsistence allowance has not been paid.

5. I have heard the learned counsel for the petitioner and the learned Government Advocate who has taken notice on behalf of the respondents.

6. When a question was posed to the learned Government Advocate, as to what is the reason behind revoking the order of suspension in respect of 4 persons and the same was not followed in respect of the petitioner who is similarly situated, except stating that those 4 persons made representations and, considering their representation the suspension order passed against them has been revoked, no direct answer was given. On the other hand, it is seen that the petitioner has made many representations, in fact, he has made a representation even on 10.01.2006 for the purpose of revocation of the suspension order. Such being the case, considering the fact that in respect of similarly situated persons, the order of suspension has been revoked, allowing the suspension order to continue in respect of the petitioner can only be termed as selective suspension.

7. Hence, I am of the considered view that the respondents must be directed to pass orders especially in the light of the representation made by the petitioner on 10.01.2006. It is contended that till date the respondent did not pay any subsistence allowance for the suspension period to the petitioner. In view of the same the

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writ petition is ordered in the following terms;

1) The second respondent shall consider the representations dated 05.05.2005 and 19.12.2005 and 10.01.2006 and in the light of the order of revocation passed in respect of the similarly placed 4 persons and pass revocation order within a period of 2 weeks from the date of receipt of copy of this order.

2) It is made clear that the respondents in the meantime shall pay the subsistence allowance due to the petitioner in accordance with law.

3) It is open to the respondents to proceed with passing of final orders in respect of the disciplinary proceedings initiated against the petitioner. No costs. Consequently, connected M.P.is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

jikr

To

1.The Commissioner of Police,
Greater Chennai City,
Egmore, Chennai-8.

2. The Joint Commissioner of Police (North Zone)
City Police Office,
Egmore, Chennai,(Now)
The Additional Commissioner of Police,
City Police Office
Egmore, Chennai-8.

+1cc to Mr.R.Sampath Kumar, Advocate Sr 53175

JE (CO)
km/9.11.

W.P.No.25003 of 2006

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